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# SUPREME COURT OF THE UNITED STATES.

## No. 285.

THE UNITED STATES, APPELLANTS,

vs.

JULIAN LOPEZ OSUNA AND AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

GOVERNMENT PRINTING OFFICE.

1875-

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1 *Transcript of the proceedings in case* 441, *Julian Lopez Osuna, claimant, vs. The United States, defendant, for the place named "San Diego."*

3 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered, that on the first day of November, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Julian Lopez Osuna for the place named "San Diego," was presented and ordered to be filed and docketed with No. 441, and is as follows, to wit:

(*Vide* page 3 of this transcript.)

Upon which petition the following proceedings were had, in their chronological order, to wit:

LOS ANGELES, *November 5th*, 1852.

In case No. 441, Julian Lopez Osuna, for the place named "San Diego," alias "Cajon de Sta. Ana," the deposition of Abel Steans, a witness on behalf of the claimants, taken before Commissioner H. Hall, with documents marked Nos. 1, 2, 3, and 4, and translations thereof, marked B and D, annexed thereto, was filed.

(*Vide* page 5 of this transcript.)

In the same case the deposition of Santiago Arguello, a witness on behalf of the claimant, taken before Commissioner Hiland Hall, was filed.

(*Vide* page 7 of this transcript.)

4 SAN FRANCISCO, *Aug. 19th*, 1853.

Case No. 441, Julian Lopez Osuna, for the place named San Deguito, called. The counsel for the claimant read the evidence. Argued, submitted, and taken under advisement.

In the same case the counsel for the claimant made the following motion, to wit:

(*Vide* page 8 of this transcript.)

Whereupon it is ordered that the petition be amended by inserting the amendments prayed for.

SAN FRANCISCO, *Jan'y 24th*, 1854.

In the same case, Commissioner R. Aug. Thompson delivered the opinion of the board, rejecting the claim.

(*Vide* page 20 of this transcript.)

5 *Petition.*

To the hon'le the board of U. S. land commissioners appointed to settle private land claims in California:

The petition of Dona Juliana Lopez Osuna, widow of Juan Ma. Osuna, deceased, respectfully showeth, that on or about the year 1840 or 1841, Juan B. Alvarado, then governor of California, in the name of the Mexican nation, by virtue of the laws in force at that time, the customs and usages of the country affecting grants of land in California, granted in full property unto the said Juan Ma. Osuna the tract of land and rancho known by the name of San Dieguito, containing one league of land, (sitio de ganado mayor,) the same being delineated on the map, a copy of which is herewith filed as part of this petition; that the original papers relating to this grant have been lost, or mislaid, and cannot be found, but your petitioner believes a record thereof exists in the archives now in the custody of the U. S. surveyor gen'l for California, and as soon as a copy of said papers can be obtained, your petitioner prays leave to file the same in this cause as part of this petition.

And your petitioner further showeth, that on or about the 11th day of August, A. D. 1845, Pio Pico, then governor of California, in the name of the Mexican nation, by virtue of the laws in force at that time, the customs and usages of the country affecting grants of land in California, granted in full property unto the said Juan Ma. Osuna a tract of land in addition to the tract of San Dieguito, which belonged to him, as hereinbefore set forth, and between the boundaries of the same and the rancho of Andres Ibarra, which said tract of land last granted as an addition, contains one league of land, (sitio de ganado mayor,) and is more particularly described in the original papers now in the hands of your petitioner ready to be produced and
6 proved; that copies of the are herewith filed as part of this petition.

And your petitioner further showeth, that on or about the 24th day of September, 1845, the said grant of one league of land, in addition to San Dieguito, was confirmed by the departmental assembly of California, and original and official certificate of such confirmation is now in the hands of your petitioner ready to be produced and proved. A copy of the same is herewith filed as part of this petition.

And your petitioner further showeth, that on or about the year 1850 the said Juan Ma. Osuna died intestate, leaving your petitioner, his lawful wife, and eight children, to wit: Julio, Ramon, Leandro, Juan Maria, Hilario and Felipe, Lugarda and Leonor, all of whom are now living.

And your petitioner further showeth, that said Juan Ma. Osuna

took possession of said tract of land and rancho of San Dieguito about the date of his said first grant to the same, to wit, about the year 1840 or 1841, and of the addition thereto on or about the date of the said grant to the same, and continued in the peaceable and quiet possession and occupancy thereof until his death, and from that time to the present his said family, as last above described, have been and now are in the peaceable and quiet occupation of said tracts of land as aforesaid.

There is no conflicting claims to said lands known to your petitioner.

The said lands have not been surveyed by the U. S. surveyor gen'l for California.

The evidence upon which your petitioner relies in this case are the records of these grants, papers and maps in the office and custody of the U. S. surveyor gen'l for California; original papers and maps, and copies of papers in the possession of your petitioner relating to said tracts of land, and the testimony of witnesses to be produced before your hon'l board.

7 Your petitioner therefore prays, in view of the foregoing facts set forth in this petition, that your hon'l board will confirm the title of said tracts of land to your petitioner and the said eight lawful children heretofore named of said Juan Ma. Osuna and your petitioner, in such manner and proportion as they may be entitled by the laws of distribution and descent, the said children being considered parties to this petition, for the purposes of such confirmation.

Respectfully submitted for such action as the justice and nature of the claims may require.

E. O. CROSBY,
*Of Counsel for Claimant.*

Filed in office Nov. 1st, 1852.

GEO. FISHER, *Sec'y.*

*Deposition of Abel Stearns.*

LOS ANGELES, *Nov. 5th*, 1852.

On this day, before Com'r Hall, came Abel Stearns, a witness in behalf of the claimant, Juliana Lopez Osuna, petition No. 441, and was duly sworn, his evidence being given in English.

The U. S. associate law agent was present.

In answer to questions by counsel for the claimant the witness testified as follows:

My name is Abel Stearns; my age is fifty-four; and I reside in Los Angeles, and have lived in California over twenty-three years.

8 I am acquainted with the handwriting and signatures of Pio Pico, José Ma. Covarrubias, Santiago Arguello.

A paper is now shown me purporting to be a grant to Juan Ma. Osuna, dated 11th August, 1845. The signatures of said Covarrubias and Pico on said paper I believe to be genuine. It is hereto annexed and marked H. H., No. 1.

A paper is also shown me purporting to be a testimonial of the approval of the departmental assembly of said grant, dated 24th of Sep-

tember, 1845. The signatures of said Pico and Covarrubias on said paper I believe to be genuine. It is hereto annexed and marked H. H., No. 2.

A paper is now shown me purporting to be a certificate of the prefector, dated April, 1843. The signature of said S. Arguello on said paper I believe to be genuine. It is hereto annexed and marked H. H., No. 3.

A map is also shown me on which is a certificate signed S. Arguello, dated 24th Jan'y, 1850. Said signature of said Arguello I believe to be genuine. Said paper is hereto annexed and marked H. H., No. 4.

I should think the map represented the land called San Dieguito, and mentioned in the title papers before described. I have frequently been on the land. It had been occupied by Juan Ma. Osuna from the year 1831 up to the time of his death in 1851. He had a house on the land, in which he lived, or had agents or servants.

The land has been considerably cultivated, and has been used also for the keeping of stock. It is situated in the county of San Diego, about seven leagues from San Diego in a northerly direction. The house is about a league and a half from the sea-coast.

ABEL STEARNS.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office Nov. 5, 1852.

GEO. FISHER, *Sec'y.*

9 *Deposition of S. Arguello.*

LOS ANGELES, *Nov. 5th*, 1852.

On this day, before Com'r Hall, came Santiago Arguello, a witness in behalf of the claimant, Juliana Lopez Osuna, petition No. 441, and was duly sworn, his evidence being interpreted by the secretary. The U. S. associate law agent was present.

In answer to inquiries by counsel for the claimant, the witness testified as follows:

My name is Santiago Arguello; my age is sixty years; and I reside on my rancho near San Diego. A map is now shown me with my certificate upon it, being a paper annexed to the deposition of Abel Stearns in this case, and marked H. H., No. 4. It is a map of a tract of land called San Dieguito, granted to the late Juan Ma. Osuna, by Juan B. Alvarado as governor, I think about the year 1840. About the years 1827 or 1828, while I was military commandant at San Diego, Gov. Echandia wrote me permission for said Osuna to occupy the land, and he did occupy it until it was granted by Alvarado as before stated. Osuna continued to occupy the land until his decease, about the year 1850, since which time it has been occupied by his widow and children. The name of the widow is Juliana Lopez. He left eight children at his decease, which are named Julia, Ramon, Leandro, Juan Maria, Hilario and Felipe, Lugardo and Leonoro. He had a house on the land before the grant by Alvarado, and he lived

in it a portion of the time, and it was inhabited until the time of his death, and to this time. He cultivated the land to a considerable extent, and had some stock on it.

Sworn and subscribed before me.

S. ARGUELLO.

Filed in office Nov. 5th, 1852.

HILAND HALL, *Com'r.*
GEO. FISHER, *Sec'y.*

10 *Motion to amend petition.*

U. S. land commission.—Claim No. 441. Doña Juliana Lopez Osuna, for tract of land called San Dieguito.

It is moved by claimant's counsel that the petition filed in the above-entitled cause be amended as follows, by inserting after the word "deceased," in the fifth line, the words "in her own behalf, and that of her and the children and heirs of her deceased husband, namely—Julio, Ramon, Leandro, Juan Maria, Hilario, Felipe, Lugardo and Leonora Osuna, according to their respective rights and interests in the claim and grant."

E. O. CROSBY, *of Counsel.*

Aug. 19, 1853.

Filed in office Aug. 19, 1853.

GEO. FISHER, *Sec'y.*

11 Pio Pico, gobernador ynterino del departamento de las Californias:

Por cuanto D'n Juan Ma. Osuna, ha pretendido para su benficio personal y el de su familia un sitio de ganado mayor en ampliacion del terreno de San Dieguito que le pertenece y entre los linderos de este y el rancho de Andres Ybarra, practicadas previamente las averiguaciones concernientes segun lo dispuesto por leyes y reglamentos, usando de las facultades que me son conferidas, à nombre de la nacion Mejicana, he venido en decreto de este din en concederle el espresado sitio de ganado mayor, declarandole en propiedad de el por las presentes letras entendiendose dicha concession de entera conformidad con las leyes à reserva de la aprovacion de la ex'ma asamblea y bajo las condiciones siguientes:

1a. Podra cercarlo el terreno que se ler adjudica sin perjudicar los camino travesias y servidumbres; lo disfrutara libre y esclusivamente, destinandole al uso y cultivo que mas le acomode.

2a. Solicitara del juez respectivo le de la posecion juridica en virtud de este despacho por el cual se demarcaran los linderos con las mojoneros necesarias.

3a. El terreno de que se hace donacion es de un sitio de ganado mayor y está entre los linderos de San Dieguito y rancho de Andres Ybarra segun espresa el diseño que obra en el espediente. El juez que diere la posecion lo hara medir y completarà si hay suficiente tierra valdia sin perjudicar los linderos de ninguno de los colindantes.

En consecuencia mando que teniendose el presente titulo por firme

y valedero se tomo razon de el en el libro respectivo y se entregue al interesado para su resguardo y demos fines.

12 Dado en la ciudad de Los Angeles, en papel comun por no haber del sella do a once de agosto de mil ochocientos cuarenta y cinco.

PIO PICO.

JOSÉ MA. CAVARRUBIAS, *S'rio.*

Queda tomada razon de este superior despacho en el libro respectivo. Angeles, fecho al supro.

COVARRUBIAS.

El ex'mo s'or gobernador dispone se tomo razon de este titulo en le sub-prefectura de S'n Diego.

COVARRUBIAS.

S. DIEGO, *Febrero 9 de* 1846.

Queda tomado razon de este despacho à f's y v'ta del libro respectivo.

ARGUELLO.

Filed in office Nov. 5th, 1852.

GEO. FISHER, *Sec'y.*

13 *Exhibit B.—Translation grant annexed to the deposition of Abel Stearns, of Nov. 5th,* 1852, *doc. H. H., No.* 1.

Pio Pico, governor ad interim of the department of the Californias:

Whereas Don Juan M. Osuna, has claimed, for his personal benefit and that of his family, one range (sitio) for neat cattle, in addition to the tract of San Dieguito, which belongs to him, and between the boundaries of the same and the rancho of Andres Ybarra, the investigations in that behalf having first been made according to the tenor of laws and regulations, in the exercise of the powers conferred upon me, in the name of the Mexican nation, I have come by decree of this day, to grant to him the aforesaid range for neat cattle, declaring unto him the ownership thereof by these present letters. said grant being understood as in entire conformity with the laws, under reservation of the approbation of the most excellent the departmental assembly, and under the following conditions:

1st. He may fence the land now granted to him without prejudicing the highways, crossroads, and rights of way; he shall enjoy it freely and exclusively, devoting it to such use or cultivation as may best suit him.

2d. He shall select the competent magistrate to give him the juridical possession, by virtue of this patent. Such judge shall mark out the boundaries with the necessary landmarks.

3d. The tract hereby granted consists of one range (sitio) for neat cattle, and lies between the boundaries of San Dieguito and the rancho of Andres Ybarra, according as shown by the design, filed with the minutes of preliminary proceedings. The magistrate who gives the

possession shall cause it to be measured, and the full quantity to be made up, if there be waste land enough, without any prejudice to the neighbors.

Wherefore I order that the present title, being held as firm
14 and valid, be entered of record in the proper book and delivered to the party interested for his protection and other purposes.

Given at the city of Los Angeles, on common paper, there being none stamped, on the 11th day of August, one thousand eight hundred and forty-five.

PIO PICO.

JOSE MA. COVARRUBIAS,, *Sec'y.*

This superior patent is entered of record in the proper book. Angeles, same date as above.

COVARRUBIAS.

His excellency the governor orders that this title be entered of record in the sub-prefecture of San Diego.

COVARRUBIAS.

SAN DIEGO, *February 9th*, 1846.

This patent is entered of record, p. 21 of the proper book.

ARGUELLO.

Filed in office Nov. 1st, 1852.

GEO. FISHER, *Sec'y.*

15 Pio Pico, gobernador interino del departamento de las Californias :

La exma. asamblea departamental en session de hoy acordado lo siguiente:

"Se aprueba la concession hecha por el superior gobierno departamental al ciudadano Juan Osuna de un sitio de ganado mayor en ampliacion del terreno de San Dieguito que actualmente posée de conformidad con la ley de 18 de Agosto de 1824, y art'o 5odel reglamento de 21 de Noviembre de 1828."

Y para resguardo de la parte del ciudadano Juan Osuna lo hago asi saber. Dado en la ciudad de los Angeles á 24 de Setiembre de 1845, en este papel comun por falta del sellado que corresponde.

PIO PICO.

JOSE MA. COVARRUBIAS, *S'rio.*

Filed in office Nov. 5th, 1852.

GEO. FISHER, *Sec'y.*

16 *Exhibit D.—Translation appro. dep. ass'y, annexed to the deposition of Abel Stearns, of Nov. 5th, 1852, doc't, No 2.*

Pio Pico, governor ad interim of the department of the Californias:

The most excellent the departmental assembly in session of to-day has resolved the following:

Approved the grant made by the superior government to the citizen Juan Osuna, of one range for neat cattle, in addition to the tract of San Dieguito, which he actually possesses, in conformity with the law of 18th August, 1824, art. 5 of the regulations of November 21, 1828.

And for the protection of the citizen Juan Osuna, I do so make known.

Given at the city of Los Angeles, on the 24th of September, 1845, on this common paper, for want of the proper stamp.

PIO PICO.

JOSE MA. COVARRUBIAS, *Secretary.*

Filed in office Nov. 1st, 1852.

GEO. FISHER, *Sec'y.*

17 *Doc. H. H., No. 3, annexed to the deposition of Abel Stearns, taken before Com'r H. Hall.*

Certifica el qe. subscribe, qe. pr. el mes de Abril de 1843, estando desemperoando la prefectura de 2o dist'o en la ciudad de los Angeles, pa. terminer las diferencias qe. tenian entre si los vecinos de S. Diego C. C. Juan M'a Osema, y Andres Ybarra, sobre cuestion de terrenos. Dispuso la autoridad superior, pasase el prefecto en persona á semedir los sitios de encinitos concedido á Ybarra, y el de S. Dreguito á usuna, cuyas concesiones segun sus titulos qe. presentaron haran de un sitio de ganado mayor a cada uno, en vesta de lo cual mandé ganado mayor a cada uno, en vista de lo cual mandé al juez de paz de S. Diego prosediese á las mediciones del de S. Diego, prosediese a las mediciones del de San Dieguito, con los testigos, qe. en este caso se requieren, presentes los dos enteresados y tomados los rumbos por un nautico qe. me acompaño á este efecto, se comenso aquella aperacion tomando pr. vase la boca de la cañada de los sances rumbo sur rematando al veste las cinco mil varas en el parage de la calera, y cuadrando al N. en los nopales ō mangles negros, y asi al este al camino real qe. pasa pa. S. Alijó, y presentado el resultado con el mapa á diseño qe. levanto el nantico, a la autoridad superior y abenidos las partes, despuso se les estendiese una acta qe. les sirviese de credencial y pr. la confirmidad en qe. harian quedado, y a consecuencia de de qe. no entrarian en ningun lites, pues quedaba definido en qe. el arroyo de Alejo serviria en lo subscribe de lendero á ambos sitios, asi se verefico y entregue á cada parte una acta de un mismo tenor firmada por mi secretario aquella, vez. Con lo que se dir qe. concluido este asunto. Y habiendome hecho presente el ciud'o Juan M'a Osuna haversele perdido la sobre d'ha acta y á mi pedimientc le es-

tiendo la presente pa. las usos qe. le combengan en S. Diego
18 á veinte y cuatro de Enero de mil ochocientos cincuenta.

S. ARGUELLO.

Filed in office Nov. 5th, 1852.

GEO. FISHER, *Sec'y.*

19 *Translation of document H. H., No. 3, annexed to the deposition of Abel Stearns, taken before Com'r H. Hall.*

The undersigned hereby certifies that during the month of April, 1843, while he was in the discharge of the duties of prefect of the 2d district in the city of Los Angeles, in order to put an end to the controversy then existing between citizens Juan Ma. Osuna and Andres Ybarra, residents of San Diego, about a question of lands, the sup'r authority directed the prefect to go personally and remeasure the tracts of the ensinitos granted to Ybarra and of the San Dieguito to Osuna; which concessions, according to their titles, which they produced, were of one sitio de ganado mayor to each. In view whereof, I ordered the justice of the peace of San Diego to proceed to the measurement of the tract of San Dieguito, with the witnesses required in such cases, both the parties being present. The courses having been taken by a practical man, who attended me for this purpose, the operation began, and taking for the starting point the mouth of the Cañada de las Salinas, direction south, at five thousand varas westward, the measure entered at the place called la Calera; thence forming an angle towards the north to the Nopales on Mangles Negros, and again towards the east to the main road leading to San Alejo. And the result thereof, together with the map or diseño, got up by the practical man, having been presented to the superior authority, and the parties being entirely conformed, the said sup'r authority directed that a record of the proceedings thereof should be made, which might serve to them as a voucher as to their having agreed thereto, and to the end that they should not enter into a lawsuit regarding the same, for it was decided that the Arroyo de San Alejo should for the future serve as a boundary to both the tracts.

Thus it was done, and a record of the same tenor, signed by me and my then secretary, was given to each of the parties. Where-
20 upon this subject was considered to have been determined.

And citizen Juan Ma. Osuna having represented to me that the said record had been lost, I grant, at his request, the present certificate, for the purpose that may best answer him.

At San Diego, the 24th of January, 1850.

S. ARGUELLO.

I hereby certify that the foregoing is true and correct translation of a Spanish document in the within-mentioned case now on file in this office.

Office of the U. S. Land Commission, &c., San Francisco, this 23d of January, 1854.

GEO. FISHER, *Sec'y.*

21 (For map, see original, page 21.)

22

23

24 (Case No. 441.)

*Opinion of the board by Com'r Thompson.*

DONA JULIANA LOPEZ OSUNA, widow, and JULIO RAMON and OTHERS, children and heirs of Juan Ma. Osuna,
*vs.*
THE UNITED STATES. } San Dieguito.

The petition in this case sets out that on or about the year 1840 or 1841, Juan B. Alvarado, then governor of California, granted to the said Juan Ma. Osuna the tract of land and rancho known by the name of San Dieguito, containing one league of land; that the original papers relating to this grant have been lost or mislaid; that petitioner believes a record thereof exists in the archives now in the custody of the United States surveyor general for California, which she begs leave to file as soon as copies can be obtained. It is further stated, that on or about the 11th of August, 1845, Pio Pico, then governor of California, granted to the said Juan Ma. Osuna a tract of land, (in addition to the tract of San Dieguito, which belonged to him, and between the boundaries of the same and the rancho of Andreo Ybarra,) containing one league of land, which said last-mentioned grant was duly confirmed by the departmental assembly on or about the 24th of September, 1845, and a certificate of such approval and confirmation duly delivered to the grantee; that the said Juan Ma. Osuna died about the year 1850, leaving the petitioner, who is his widow, and eight children, whose names are given; that the said Osuna took possession of the land first granted at or about the date of the said first grant, and of the addition thereto about the date of the same grant, and that he and his family have continued in the peaceable and quiet possession of said lands to the present
25 time, and she therefore prays that said lands may be confirmed to her and the eight lawful children of the said Osuna before mentioned, who, she prays, may be considered parties to said petition for the purposes of said confirmation.

There are facts and circumstances presented by the record in this case which would go far to raise a presumption in favor of its validity, if the proper testimony, which is evidently in existence, had been brought forward to sustain it; but in the condition in which it is presented for adjudication, it is impossible for this board to confirm it consistently with the principles which are laid down for its government by the act of Congress creating it. The original grant for one square league, called San Dieguito, has, as stated in the petition, been lost; but no foundation is laid for the introduction of secondary evidence in proof of its contents, nor is any such evidence introduced. The only testimony on this point is contained in the deposi-

tion of Santiago Arguello, in which, speaking of a map which had been filed in the case, with a certificate of the witness appended, dated Jan. 24, 1850, he says, "it is a map of a tract of land called San Dieguito, granted to the late Juan Ma. Osuna by Juan B. Alvarado, as governor, I think about the year 1840." This is the only evidence of such grant ever having been made, except the reference which is made to it in the grant for the additional square league made by Gov. Pio Pico, dated August 11, 1845, and the certificate of the approval of the same, dated 24th of September, 1845. The petition sets out that it believes that a record of the original papers in relation to said grant exists in the archives now in the custody of the United States surveyor general for California, and prays for leave to file copies of the same as soon as they can be made out.

26 No such copies, however, have been filed; but upon an examination of the archives in the office of the U. S. surveyor general a voluminous record was found showing that a grant of the land called San Dieguito was made to Juan Ma. Osuna by Gov. Gutierrez in 1836, but no evidence whatever that such a grant was made by Gov. Alvarado in 1840, or at any other time. There is consequently no testimony before the board that any such grant as that upon which the claim proposes to be founded was ever made, or, if made, there is no proof of its contents, or of anything else by which the land granted could be identified. Two papers are filed in the case: the one purporting to be a map of the place called San Dieguito, to which is appended a certificate signed S. Arguello, to the effect that it conforms to the original which served for the measurement of a league of land in the place of San Dieguito, dated Jan. 24, 1850; the other a certificate of the same person of the same date, setting forth that in the month of April, 1843, while he was acting as prefect of the 2d district in the city of Los Angeles, in order to put an end to the controversy then existing between citizens Juan Ma. Osuna and Andres Ybarra, a survey and measurement of the tract of ensenito granted to Ybarra and of the San Dieguito to Osuna, was made by his directions, together with a map or diseño of the same. Said certificate also sets out the boundaries, and states that a copy of the record of said proceedings were given to each of the parties, &c. Neither of these papers can be considered as legal evidence in the case. They are clearly not official documents, as they were not executed by the officer under whose authority the acts which they describe were done, until several years after he had ceased to exercise his official functions, and long after the Mexican government,

27 under whose authority he professes to have acted, had ceased to exist in the country. They are not made under oath, and are entitled to no more weight or authority than the simple declarations of any other individual. The only manner in which the claimants could have availed themselves of the facts which they contain would have been to have embodied them in the deposition of Santiago Arguello. His testimony taken in the case makes no reference whatever to the second named certificate, and only speaks of the map as a map of the tract of land called San Dieguito.

Nothing is said as to the data by which the boundaries described were ascertained; nothing of the original of which it imports to be a copy; nothing, in fact, which can connect either the one or the other with this case as legal testimony.

The absence, then, of any evidence of the execution of the grant or of its contents; the total failure to show, by any competent testimony, the location or identification of the land claimed in the first grant is conclusive on that branch — the case.

In relation to the second grant for the additional league made by Gov. Pio Pico, in 1845, there is no evidence whatever, except the original grant itself, and the certificate of the approval of the departmental assembly, the due execution of which is fully proven, but here the proof stops. No testimony is adduced to show that the grantee or those claiming under him ever were in possession of or occupied the land granted; nor is there any evidence unconnected with the former grant, by which the land could be located or identified; and we have already seen that in relation to the latter the claimants have entirely failed, by any competent testimony, to establish its boundaries or fix its location.

28 From a careful examination of the whole case as presented, we can see no legal or equitable grounds which would entitle the claimants to a confirmation.

The claim is therefore rejected.

Filed in office Jan'y 24, 1854.

GEO. FISHER, *Sec'y.*

*Case No.* 441.

DONA JULIANA LOPEZ OSUNA *et al.*
*vs.*
THE UNITED STATES. } San Dieguito.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the petitioner is not valid, and it is therefore decreed that his application for a confirmation thereof be denied.

ALPHEUS FELCH.
THOMPSON CAMPBELL.
R. AUG. THOMPSON.

Filed in office Jan'y 24, 1854.

GEO. FISHER, *Sec'y.*

29

30 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary of the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing twenty-four pages, numbered from 1 to

24, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 441 on the docket of the said board, wherein Juliana Lopez Osuna is the claimant against the United States for the place known by the name of "San Diego."

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, [SEAL.] California, this twelfth day of September, A. D. 1854, and of the independence of the United States of America the seventy-ninth.

GEO. FISHER, *Sec'y.*

Filed September 20th, 1854.

W. H. CARTER, *Clerk.*

31

32 *Notice of appeal by claimant.*

CLERK'S OFFICE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

Whereas the commissioners constituted for the purpose of ascertaining and settling private land claims in the State of California, by the act of Congress of the U. S. of America approved on the 3d of March, 1851, entitled "An act to ascertain and settle the private land claims in the State of California," did, on the twenty-fourth day of January, eighteen hundred and fifty-four, by their decision of that date, decide against the claim presented by the undersigned to the said commissioners, which claim is for land lying in the said southern district, and is number four hundred and forty-one (441) on the docket of claims before said board; and the said claimant being desirous that the said district court should review the said decision, now, hereby, files this notice in the said clerk's office of her intention to prosecute an appeal, as is provided by the 12th section of an act entitled "An act making appropriations for the civil and diplomatic expenses of the government for the year ending the 30th of June, 1853, and for other purposes," which said act was approved on the 31st of August, 1852.

JULIANA LOPEZ OSUNA,
By E. O. CROSBY, *of Counsel.*

To the clerk of the U. S. dist. court of the south'n dist. of California, 23d of February, 1854.

Filed 28 February, 1854.

ALEX. S. TAYLOR, *Clerk.*

33

34 *Notice of appeal by claimants.*

In the matter of the application of Juliana Lopez Osuna for confirmation of the title to the rancho of San Dieguito, in the county of San Diego and State of California.

In the U. S. dist. court for the southern district of California.

JULIANA LOPEZ OSUNA
*vs.*
THE UNITED STATES.

SIR: Please take notice that the claimant in this case appeals from the whole of the decision of the board of commissioners for ascertaining and settling private land claims in the State of California, rejecting her claim to the title to the rancho of San Dieguito, in the county of San Diego aforesaid, said decision having been rendered by said board on the 24th day of January, A. D. 1854.

THO'S W. SUTHERLAND,
*Att'y for Claimant.*

To CHARLES E. CARR, Esq.,
*Clerk of the U. S. Dist. Court for the Southern Dist. of Cal'a.*

Filed Dec. 13th, 1854.

C. E. CARR, *Clerk.*

35 *Petition for review.*

United States district court for the southern district of the State of California.

HEIRS OF J. MA. OSUNA, appellants,
*vs.*
THE UNITED STATES, appellees.

Docket No. 92.—Transcript No. 441.—"San Dieguito."

Your petitioners, the heirs of Juan Ma. Osuna, respectfully shows unto this honorable court, that on the 1st day of November, A. D. 1852, they filed before the board of commissioners their petition, praying for the confirmation of title to the land called "San Dieguito," situate in the present county of San Diego, and in the southern district of California, which petition is hereby specially referred to for a description of the land claimed and the title of the claimant, and that on the 24th day of January, 1854, the said board of commissioners decided upon the validity of said claim, and rejected it.

And your petitioners further show, that a transcript of the proceedings and evidence in the aforementioned claim before the said board of commissioners, was filed in the office of the clerk of the United States district court for the southern district of California, on the 20th day of September, A. D. 1854, and that a notice of claimants' intention to prosecute the appeal from the decision of said board of commissioners was duly filed in the office of said clerk of said court, on the 13th day of December, A. D. 1854. And your petitioner prays this honorable court to review the decision of said board of commissioners, and on the hearing of this cause to reverse said

decision, and to confirm his title to the aforesaid land, and that a copy of this petition be served on the United States district attor-
36 ney for the southern district of California.

MYRON NORTON,
*Att'y for Appellant.*

Filed 5th Dec'r, 1856.

C. SIMS, *Clerk.*

*Summons.*

UNITED STATES OF AMERICA,
*Southern District of California, ss:*

The President of the United States to P. Ord, U. S. attorney, greeting:

Take notice that a petition, a copy of which is herewith served upon you, has been filed against the United States in the district court of the United States in and for the southern district of California, on the 5th day of December, in the year of our Lord one thousand eight hundred and fifty-six, at the city and county of Los Angeles, in said district, by the heirs of Juan Ma. Osuna, praying said court to review the decision of the United States land commissioners of the 24th day of January, 1854, rejecting his claim to the lands called "San Dieguito," situate in the county of San Diego, and that you are required to appear at said court, in said city, within ten days after the service hereof, if served on you within the county of Los Angeles,
37 and within twenty days if served on you in the county of San Diego or San Bernardino, and within forty days if served on you in any other county of said State, exclusive of the day of service, and answer said petition, or the petitioner will apply to the court for the relief demanded herein.

In witness whereof, I have hereunto set my hand and affixed the [SEAL.] seal of said court, at the city of Los Angeles, this 13th day of December, A. D. 1856.

C. SIMS, *Clerk,*
P'r JAMES H. COLEMAN, *Dep'ty.*

Rece'd Dec. 13th, 1856.

EDWARD HUNTER, *U. S. Marshal,*
P'r M. L. GOODMAN, *Dep'ty.*

I served this summons, together with a certified copy of the petition, upon P. Ord, U. S. attorney, by delivering to him personally a true copy of the same, at Los Angeles, in the southern district of California, on the 15th day of December, A. D. 1856.

EDWARD HUNTER, *U. S. Marshal,*
By M. L. GOODMAN, *Dep'ty.*

Sworn to and subscribed before me this 15th December, A. D. 1856.

C. SIMS, *Clerk,*
P'r J. H. COLEMAN, *Dep'ty.*

Filed this 15th Dec., A. D. 1856.

C. SIMS, *Clerk,*
P'r J. H. COLEMAN, *Dep'ty.*

38 *Answer of United States.*

In the district court of the United States for the southern district of California.—Hon I. S. K. Ogier, judge.

HEIRS OF J. MA. OSUNA, appellants,
*vs.*
THE UNITED STATES. } No. 92.—Trans. No. 441.

The answer of P. Ord, United States attorney for the southern district of California, for and in behalf of the United States, to the petition for review in said cause, says: That he denies all and singular each and every allegation in said petition contained; and further, he denies generally the validity of the alleged title of the claimants and petitioners, and he prays that the court will affirm the decision of the board of land commissioners, and decree the alleged title or titles to be invalid, and general relief.

P. ORD,
*Att'y of the United States for the Southern District of California.*

I have served this answer upon Myron Norton, attorney for appellants, by delivering to him a true copy of this answer, at the city of Los Angeles, December 16th, 1856.

EDWARD HUNTER, *U. S. Marshal,*
P'r M. L. GOODMAN, *Dep'ty.*

Sworn to and subscribed before me this 17th December, A. D. 1856.

C. SIMS, *Cl'k,*
P'r J. H. COLEMAN, *Dep'ty.*

Filed Dec. 16th, 1856.

C. SIMS, *Clerk.*

39

40 *Decree.*

United States district court for the southern district of California. December term, A. D. 1857.

JULIANA LOPEZ OSUNA *et al.*, appellants,
*vs.*
THE UNITED STATES, appellees. } San Dieguito.—No. 92.

This cause coming on to be heard on appeal from the decision of the board of land commissioners appointed to settle private land claims in California under an act of Congress approved March 3d, 1851, upon the transcript of proceedings and decision of said board, and the papers and evidence upon which said decision was founded, all of which have been filed in this court, and upon the pleadings filed in this cause, and counsel for the respective parties having been heard, it is ordered, adjudged, and decreed, that the decision of said board rejecting said claim and title to the lands described in said transcript filed in this cause be, and the same is hereby, reversed and

set aside, and that the title of the above-named appellants is good and valid.

The land of which confirmation is hereby made to the said appellants is known by the name of "San Dieguito," and situated in the county of San Diego, State of California, and consisting of two adjoining tracts of land, the first granted to Juan Ma. Osuna, now deceased, and husband of the said Juliana Lopez Osuna, by Juan B. Alvarado, then governor of California, in the year 1840 or 1841, and known by the name of "San Dieguito," containing one square league of land, together with an addition to said tract of land consist-
41 ing of one range (sitio) for neat cattle, which lies between the boundaries of "San Dieguito" and the rancho of Andres Ybarra, according as shown by the design (diseño) filed with the minutes of preliminary proceedings, and on file in the papers of this case.

The quantity of land hereby confirmed being two square leagues of land, and no more, provided that quantity be contained within the boundaries; but if a less quantity be contained within said boundaries, then confirmation is hereby made to such less quantity. And for a further description of the said land reference is hereby made to the grant and evidence contained in the transcript on file in this case.

ISAAC S. K. OGIER,
*U. S. Dist. Judge.*

Filed March 4th, 1858.

C. SIMS, *Clk.*

42 *Argument, submission, and decision.*

United States district court, south'n dist. California—Regular December term, 1857.—March 4th, A. D. 1858.—Hon. Isaac S. K. Ogier, judge.

J. L. OSUNA, appellant,
*vs.*
THE UNITED STATES, appellee. } No. 92.—San Diego.

Now, on this day, this cause coming on to be heard, the parties appearing by their respective attorneys—the appellant by Myron Norton, esq., and the appellee by P. Ord, U. States dist. attorney—and after argument of counsel, the same is submitted to the court for final adjudication.

Whereupon, the court being fully advised in the premises, it was ordered, adjudged, and decreed, that the claim of the appellant be, and the same is hereby, confirmed, and a decree was ordered to be entered up accordingly, which is done.

43 *Appeal to Supreme Court.*

United States district court, south'n district California—Regular December term, 1857.—March 15, A. D. 1858.—Hon. Isaac S. K. Ogier, judge.

J. LOPEZ OSUNA *et al.*, appellants,
*vs.*
THE UNITED STATES, appellees.
} No. 92.—"San Dieguito."

On motion of E. J. C. Kewen, acting U. S. dist. attorney, it is ordered that an appeal be allowed the United States in this cause.

44 United States district court, south'n district Cal'a—Clerk's office, Monterey.

I, John O. Wheeler, clerk of the United States district court for the south'n dist. Cal'a, do hereby certify the above and foregoing forty-three pages, numbered from 1 to 43, both inclusive, to contain a full, true, and correct transcript of the record of the proceedings, and of the decision of said court, of the documentary evidence and testimony of the witnesses upon which the same is founded, on file in my office, in case No. 92 upon the docket of said court, wherein J. Lopez Osuna *et al.* is the claimant against the United States for the place known by the name of "San Dieguito."

In testimony whereof, I hereunto set my hand and affix the [SEAL.] seal of said court, at Monterey, this 30th day of June, A. D. 1863.

JOHN O. WHEELER,
*Clk of Dist. Ct, S. Dist. Cal'a.*